



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

January 7, 2019

CERTIFIED MAIL: 7016 0750 0000 3470 3142

Willamette University  
c/o Rich Dennis, Office of Campus Safety  
900 State Street  
Salem, OR 97301

Re: Amended Notice of Civil Penalty Assessment and Order  
Case No. LQ/HW-WR-2018-123

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$5,100 for four hazardous waste management violations found during an inspection of your maintenance yard in Salem. Additionally, in the attached Notice of Civil Penalty Assessment and Order (Notice), DEQ has cited the university, without penalty, for five other violations of hazardous waste law.

DEQ issued this penalty because despite having received three Warning Letters in the past ten years for hazardous waste violations, DEQ found numerous and repeated violations again this year. Improper storage and management of hazardous waste threatens human health and the environment. To protect against such threats, the legislature has enacted statutes and DEQ has adopted rules establishing strict requirements for the identification, storage, and disposal of hazardous waste, universal waste, and used oil. Your failure to comply with these requirements increases the risk that human health or the environment could be harmed by mismanagement of hazardous waste.

DEQ appreciates your efforts to address the violations, including analyzing the wastes, properly managing and disposing of the containers, and providing additional hazardous waste training. DEQ considered these efforts when determining the amount of civil penalty.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

Electronic cc: Killian Condon, DEQ Eugene Office  
Rich Dennis, Associate Director of Campus Safety, Willamette University,  
[rdennis@willamette.edu](mailto:rdennis@willamette.edu)  
Todd Melgreen, Chemical Hygiene Officer, Willamette University,  
[tmelgreen@willamette.edu](mailto:tmelgreen@willamette.edu)

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) AMENDED NOTICE OF CIVIL PENALTY  
4 WILLAMETTE UNIVERSITY, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. LQ/HW-WR-2018-123

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 466.990, 468.100, ORS 468.126 through  
9 468.140, ORS Chapters 183 and 466, and Oregon Administrative Rules (OAR) Chapter 340, Divisions  
10 011, 012, 100-102, and 111.

11 II. FINDINGS OF FACT

12 1. Respondent is a private university located at and near 900 State Street in Salem, Oregon  
13 (the Facility).

14 2. Respondent is registered with DEQ as a hazardous waste generator under U.S.  
15 Environmental Protection Agency (EPA) Identification Number ORD055968481.

16 3. As of April 11, 2018, Respondent had reported to DEQ that each year from 2007 to  
17 2017, the Facility was a small quantity generator of hazardous waste, generating between 220 and  
18 2,200 pounds of hazardous waste on a monthly basis and accumulating no more than 2.2 pounds of  
19 acutely hazardous waste at any time during the year.

20 4. DEQ inspected the Facility on April 11, 2018, and at that time, Respondent was a small  
21 quantity generator of hazardous waste, generating between 220 and of 2,200 pounds of hazardous waste  
22 on a monthly basis.

23 5. In 2015, Respondent accumulated four pounds of waste sodium azide at the Facility.  
24 Respondent listed this waste as U.S. Environmental Protection Agency (EPA) Hazardous Waste Numbers  
25 P105 on Uniform Hazardous Waste Manifest 013400357JJK in March of 2015.

26 6. In 2016, Respondent accumulated seven pounds of waste dinitrophenol and nine pounds  
27 of waste cyanide solutions (potassium cyanide) at the Facility. Respondent listed these wastes as EPA

1 Hazardous Waste Numbers P048, and P030 and P098, respectively, on Uniform Hazardous Waste  
2 Manifest 013400266JJK in March of 2016.

3 7. In July of 2018, Respondent revised its reports to DEQ for 2015 and 2016 to reflect that  
4 Respondent was a large quantity generator of hazardous waste for those two years based upon the  
5 amounts of acutely hazardous wastes described in paragraphs 5 and 6 above, and submitted payment of  
6 the invoiced hazardous waste fees for a large quantity generator.

7 8. Respondent does not have a permit to treat, store, or dispose of hazardous waste at the  
8 Facility.

9 9. On or about April 11, 2018, Respondent stored one open five-gallon container of  
10 ignitable solvent at the Facility that was not labeled with the date Respondent first began accumulating  
11 the waste in the container, or the words “hazardous waste.”

12 10. On or about April 11, 2018, Respondent stored a mixture of used alkaline and lithium  
13 batteries destined for recycling in five five-gallon containers. None of the containers were labeled with  
14 any of the following phrases: “Universal Waste – Batteries,” “Waste Batteries,” or “Used Batteries.”

15 11. On or about April 11, 2018, Respondent stored waste mercury-containing fluorescent  
16 light bulbs in a 55-gallon drum labeled as “Universal Waste Lamps” and dated August 10, 2016, at the  
17 Facility.

18 12. On or about April 11, 2018, Respondent did not post a contingency plan adjacent to the  
19 hazardous waste storage area that included the location of fire extinguishers, fire alarms, and spill  
20 control materials.

21 13. On or before April 11, 2018, Respondent stored used oil in one five-gallon container and  
22 one 55-gallon drum with approximately ten gallons of an oil/water mixture, not labeled as “used oil.”

### 23 III. CONCLUSIONS

24 1. Respondent violated OAR 340-102-0011(2) by failing to accurately determine if  
25 Respondent’s residues (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 as adopted by OAR  
26 340-100-0002) were hazardous waste. Specifically, Respondent did not accurately characterize one  
27 five-gallon container of ignitable solvent waste, which pursuant to 40 CFR 261.21(a)(1) and (b) is a

1 hazardous waste and has the EPA Hazardous Waste Number of D001. This is a Class I violation,  
2 according to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$1,800 civil penalty for this violation.

3 2. Respondent violated 40 CFR 262.34(d)(2) as it references 40 CFR 265.173(a), both  
4 adopted pursuant to OAR 340-100-0002(1), by failing to store the hazardous waste described in Section  
5 III, Paragraph 1, in a closed container. This is a Class II violation pursuant to OAR 340-012-0068(2)(m).  
6 DEQ assesses a \$1,100 civil penalty for this violation.

7 3. Respondent violated 40 CFR 262.34(d)(4) as it references 262.34(a)(2), both as adopted by  
8 OAR 340-100-0002, by failing to label the container of hazardous waste described in Section III,  
9 Paragraph 1, with the date when the period of accumulation began. This is a Class II violation, according  
10 to OAR 340-012-0068(2)(a). DEQ assesses a \$1,100 civil penalty for this violation.

11 4. Respondent violated 40 CFR 262.34(d)(4) as it references 262.34(a)(3), both as adopted by  
12 OAR 340-100-0002, by failing to label the container of hazardous waste described in Section III,  
13 Paragraph 1, with the words "Hazardous Waste." This is a Class II violation, according to OAR 340-012-  
14 0068(2)(b). DEQ assesses a \$1,100 civil penalty for this violation.

15 5. Respondent violated 40 CFR 273.14(a), as adopted by OAR 340-100-0002, by failing to  
16 label containers of universal waste batteries with required language. The lithium batteries are universal  
17 waste as defined in 40 CFR 273.2(a) and 273.9, both as adopted by OAR 340-100-0002. This is a Class II  
18 violation, according to OAR 340-012-0068(2)(p). DEQ has not assessed a civil penalty for this violation.

19 6. Respondent violated 40 CFR 273.15(a), as adopted by OAR 340-100-0002, by failing to  
20 ship one 55-gallon fiber drum, dated August 10, 2016, containing universal waste lamps off-site within one  
21 year of generation. The waste fluorescent lamps were mercury-containing universal waste lamps as  
22 defined in 40 CFR 273.5 and 273.9, both as adopted by OAR 340-100-0002. This is a Class II violation,  
23 according to OAR 340-012-0068(2)(p). DEQ has not assessed a civil penalty for this violation.

24 7. Respondent violated OAR 340-102-0041(2) and OAR 340-102-0065(1) by failing to  
25 timely submit to DEQ accurate annual hazardous waste generator reports and fees as required for a large  
26 quantity generator of hazardous waste for 2015 and 2016. These are Class II violations, according to OAR  
27 340-012-0053(2). DEQ has not assessed a civil penalty for these violations.



1 you may represent yourself. If you are a corporation, partnership, limited liability company,  
2 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
3 authorized representative, as set forth in OAR 137-003-0555.

4 Active duty service-members have a right to stay proceedings under the federal Service  
5 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
6 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
7 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
8 <http://legalassistance.law.af.mil/content/locator.php>.

9 If you fail to file a timely request for hearing, the Notice will become a final order by default  
10 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
11 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
12 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
13 the relevant portions of its files, including information submitted by you, as the record for purposes of  
14 proving a prima facie case.

15  
16  
17  
18 \_\_\_\_\_  
19 Date

1/7/19

20 \_\_\_\_\_  
21 Kieran O'Donnell, Manager  
22 Office of Compliance and Enforcement  
23  
24  
25  
26  
27

AMENDED EXHIBIT No. 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION No. 2: Failing to close containers of hazardous waste, in violation of 40 CFR 262.34(d)(2) as it references 40 CFR 265.173(a), both adopted pursuant to OAR 340-100-0002(1).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(m).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C)(i) because the violation involved five gallons of hazardous waste.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(J) because Respondent is a small quantity generator of hazardous waste and violated a hazardous waste rule.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because DEQ has insufficient information on which to base a finding that the violation occurred on more than one day (April 11, 2018).

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent has received three Warning Letters (WLs) for hazardous waste violations at the Facility in the past 10 years. DEQ cited Respondent for violating this requirement in a 2008 Warning Letter, and DEQ reminded Respondent of the requirement in a 2015 WL. By again failing to ensure all containers of hazardous waste were closed, Respondent failed to take reasonable care to avoid the foreseeable risk of committing this violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to minimize the effects of the violation by putting the waste in a new closed container

promptly after DEQ's inspection and properly disposing of the hazardous waste in July 2018.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0, as DEQ has insufficient information on which to base an estimate of more than a de minimus economic benefit for this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 0 + 4 - 3)] + \$0 \\ &= \$1,000 [\$100 \times 1] + \$0 \\ &= \$1,000 + \$100 + \$0 \\ &= \$1,100 \end{aligned}$$

AMENDED EXHIBIT No. 3

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION No. 3: Failing to label a hazardous waste storage container with the date when the period of accumulation began, in violation of 40 CFR 262.34(d)(4) as it references 262.34(a)(2), both as adopted by OAR 340-100-0002.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(a).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C)(i) because the violation involved five gallons of hazardous waste.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(J) because Respondent is a small quantity generator of hazardous waste and violated a hazardous waste rule.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because DEQ has insufficient information on which to base a finding that the violation occurred on more than one day (April 11, 2018).

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent has received three Warning Letters for hazardous waste violations at the Facility in the past 10 years, two of which (in 2008 and 2015) cited violations of this requirement to label containers of hazardous waste with accumulation start dates. By again failing to ensure all containers of hazardous waste were dated, Respondent failed to take reasonable care to avoid the foreseeable risk of committing this violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of

-3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to minimize the effects of the violation by properly disposing of the hazardous waste in July 2018.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0, as DEQ has insufficient information on which to base an estimate of more than a de minimus economic benefit for this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 0 + 4 - 3)] + \$0$   
 $= \$1,000 [\$100 \times 1] + \$0$   
 $= \$1,000 + \$100 + \$0$   
 $= \$1,100$

AMENDED EXHIBIT No. 4

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY  
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION No. 4: Failing to label a hazardous waste storage container with the words "hazardous waste," in violation of 40 CFR 262.34(d)(4) as it references 262.34(a)(3), both as adopted by OAR 340-100-0002.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(b).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C)(i) because the violation involved five gallons of hazardous waste.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(J) because Respondent is a small quantity generator of hazardous waste and violated a hazardous waste rule.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because DEQ has insufficient information on which to base a finding that the violation occurred on more than one day (April 11, 2018).

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent has received three Warning Letters for hazardous waste violations at the Facility in the past 10 years, all of which cited violations of this requirement to label containers of hazardous waste with the words "hazardous waste." By again failing to ensure all containers of hazardous waste were labeled, Respondent failed to take reasonable care to avoid the foreseeable risk of committing this violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of

-3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to minimize the effects of the violation by properly labeling and disposing of the hazardous waste in July 2018.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0, as DEQ has insufficient information on which to base an estimate of more than a de minimus economic benefit for this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 0 + 4 - 3)] + \$0$   
 $= \$1,000 [\$100 \times 1] + \$0$   
 $= \$1,000 + \$100 + \$0$   
 $= \$1,100$